

**Date:** April 8, 2014

**To:** Thomas J. Bonfield, City Manager

**Through:** W. Bowman Ferguson, Deputy City Manager

**From:** Joel V. Reitzer, Jr., Director, General Services Department

**Subject:** Amendment #2 to the Professional Services Agreement for the Design for Fire Station 9 with Garner & Brown Architects PA and Amendment #2 to the Contract for Special Inspections and Constructions Materials Testing Services for the Fire Station 9 Project with A1 Consulting Group Inc.

### **Executive Summary**

Fire Station 9 (the "Project") began construction on February 18, 2013, and was scheduled for substantial completion on December 15, 2013. Due to weather delays and technical performance issues of the contractor, Morlando Construction LLC ("Morlando"), the Project has been delayed significantly, and beyond the allowed contract time.

Technical performance issues and an extended construction schedule have resulted in additional services due to additional oversight, inspections, and other services required of the Architect, Garner & Brown Architects PA ("Garner & Brown"); further, Garner & Brown will be required to provide additional services arising out of oversight of corrective work and extended construction administration. Additionally, because of extensive corrective work, General Services is seeking full time inspections by its third party inspector, A1 Consulting Group Inc. ("A1 Consulting"), while portions of the non-conforming work are remediated.

### **Recommendation**

The General Services Department recommends that the City Council:

1. Authorize the City Manager to execute a contract amendment to the Professional Services Agreement for the Design of Fire Station 9 with Garner & Brown Architects PA in the amount of \$109,217.36 so that the total contract amount will not exceed \$335,423.36.
2. Establish an additional design contingency in the amount of \$33,542.33, and authorize the City Manager to negotiate and execute amendments to the Professional Services Agreement for the Design for Fire Station 9 with Garner & Brown Architects PA provided the total cost does not exceed \$368,965.69.
3. Authorize the City Manager to execute a contract amendment to the Contract for Special Inspections and Constructions Materials Testing Services for the Fire Station 9 Project with A1 Consulting Group Inc. in the amount of \$39,750.00 so that the total contract amount will not exceed \$89,750.00.

4. Establish an additional contingency in the amount of \$8,975.00, and authorize the City Manager to negotiate and execute amendments to the Contract for Special Inspections and Constructions Materials Testing Services for the Fire Station 9 Project with A1 Consulting Group Inc. provided the total cost does not exceed \$98,725.00.

### **Background**

On October 7, 2010, the City executed a Professional Services Agreement for Durham Fire Station 9 with Garner & Brown in the amount of \$213,301.00 to provide design and construction administration services. On February 3, 2012, the City executed Amendment #1 to Garner & Brown's contract for \$12,905.00 to provide design work associated with the recombination of a portion of an adjacent City parcel to satisfying a 16% impervious stormwater requirement. Garner & Brown's current contract amount is \$226,206.00.

On December 19, 2012, the City executed a Service Contract with A1 Consulting in the amount of \$30,000.00 to provide construction materials testing and special inspection services. On January 16, 2014, the City executed Amendment # 1 to A1's contract for \$20,000 to provide work associated with numerous failed inspections by Morlando due to non-conforming work. The City is seeking reimbursement by change order from Morlando for failed inspection as allowed by the contract. The current contract amount for A1 is \$50,000.00.

On November 20, 2013, City Council authorized the City Manager to execute a construction contract for Durham Fire Station 9 to Morlando Construction. The contract was executed on January 25, 2013, and a Notice to Proceed was issued on February 18, 2013 establishing December 15, 2013 as substantial completion for the Project. The substantial completion date was modified to December 24, 2013, when Change Order 1 added 9 days to the contract. General Services is reviewing a request for an additional 88 days due to weather and additional site work, and if accepted, the adjusted technical substantial completion date would be March 22, 2014. To date, the Project is not complete, and Morlando has failed to deliver the project within the contract time. However, the actual completion dates will be further adjusted after technical remediation of on-site corrections.

### **Issues/Analysis**

On November 1, 2013, the Architect, Garner & Brown, gave notice to Morlando of its failure to prosecute the work in accordance with the contract documents. Since then, the City and Architect have repeatedly notified Morlando Construction of defective and noncompliant work and failure to perform in accordance with the contract.

On February 17, 2014, General Services sent written notice to the Surety that Morlando is in breach of its contractual obligations due to multiple contractual failures including 1) failure to supervise the Project and supply properly skilled subcontractors resulting in nonconforming and defective work, 2) failure to provide adequate engineering to provide remedial solutions to correct defective work, and 3) persistently failing to correct nonconforming and defective work. The City demanded that the Surety honor its obligations under the Performance Bond and rectify the contractual breaches by Morlando.

The Surety is currently monitoring Morlando's progress, and the City and Architect are informing the Surety on continued issues including correspondence regarding corrective work on the vertical framing and roof trusses that is ongoing, and remains non-conforming.

General Services intends to recover as much of these required additional construction service fees as may be allowed under the contract and pursuant to any claims the City may be able to assert against the Contractor or the Contractor's Surety at project completion.

### Alternatives

City Council could choose not to amend Garner & Brown's professional services contract or A1 Consulting's service contract. Staff does not recommend this alternative as Garner & Brown and A1 Consulting both continue to provide required construction administration and testing/inspections services that are essential to completing the Fire Station 9 project.

### Financial Impacts

<b>Project Funding</b>		
Certificates of Participation		\$2,878,637.00
2009 Limited Obligation Bonds		\$1,442,963.00
<b>Total Project Funding</b>		<b>\$4,321,600.00</b>
<b>Funding Uses Summary</b>		
<b>Prior:</b>		
Land Acquisition		\$231,458.00
Fire Truck and Equipment		\$1,000,000.00
Professional Services-Design (Garner & Brown)		\$226,206.00
Construction Materials Testing ( A1)		\$50,000.00
Construction Contract		\$2,153,691.92
Construction Contingency		\$186,448.08
*Other Owner's Expenses		\$282,311.31
Total		\$4,130,115.31
<b>Current:</b>		
Professional Services Design Amendment	3501B900-731003-CB007	\$109,217.36
Professional Services Design Contingency	3501B900-731900- CB007	\$33,542.33
Construction Materials Testing Amendment	3501B900-731003-CB007	\$39,750.00
Construction Materials Testing Contingency	3501B900-731900- CB007	\$8,975.00
Total		\$191,484.69
<b>Funding Uses Total</b>		<b>\$4,321,600.00</b>

\*Other Owner's Expenses include but are not limited to Impact Fees, Permits, Surveys, and Reviews.

### SDBE Summary

This is a contract amendment that was not reviewed for compliance with the Ordinance to Promote Equal Business Opportunities in City Contracting. A-1 Consulting is a certified SDBE firm.